IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9601 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIVABHAI DINABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT THR' ADDITIONAL SECRETARY & 24 - Respondent(s)

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Appearance :
MR DILIP B RANA for Petitioner(s) : 1,
MS TRUSHA PATEL ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
MR TUSHAR MEHTA for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
MR VC VAGHELA for Respondent(s) : 4 - 24.
- for Respondent(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 14/06/2007
CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

By our order dated 18.4.2007, we allowed this petition in terms of the directions with clarifications given in paragraphs 5 to 8 of the said order. We had indicated that the reasons for the

directions shall follow. Here are the reasons.

2.0 The facts leading to filing of this petition, briefly stated and as averred by the petitioner, are as under :-

2.1 The petitioner is a partner of the partnership firm called RK & Company as well as Administrator of the said fir. The petitioner is also a license holder of the APMC, Jetpur Pavi since 1997. The petitioner contested the elections to the said APMC from the traders' constituency in the year 1997 and was elected as Vice Chairman of the APMC, Jetpur Pavi for the term 1997-2001. The petitioner again contested the elections to the said APMC in the year 2001 and was elected from the traders' constituency and was a Director of the said APMC for the term 2001-05.

2.2 The petitioner also applied for renewal of license for the year 2005-06. The Licensing Sub-Committee of the APMC had at its meeting held on 28.6.2005 granted licenses to only 79 traders. Again at its meeting held on 7.1.2006, the Licensing Sub-Committee of the APMC decided to grant 646 trader's licenses, but the petitioner's application was kept in abeyance. The petitioner, therefore, approached the Director of Agricultural Marketing and Rural Finance who allowed the petitioner's appeal by order dated 17.3.2006 directing the APMC to grant trader's license to the petitioner. The APMC challenged the said order of the Director before the State Government in revision, but the State Government did not grant any interim stay of the order dated 17.3.2006 of the Director of Agricultural Marketing and Rural Finance.

2.3 In the meantime, on 30.1.2006, Director of Agricultural Marketing and Rural Finance issued the order scheduling elections to the APMC, Jetpur Pavi to be held on 5.5.2006. The petitioner herein challenged the voters' list for traders constituency published

by the APMC on the ground that out of 1500 and odd voters in the list, as many as 818 persons were included in the list on the basis of licenses issued to them after the Director of Agricultural Marketing and Rural Finance had issued the notification on 30.1.2006 for holding the elections on 5.5.2006 and incorporating the detailed program for various stages of elections to APMC Jetpur Pavi. In the revision application filed by the petitioner before the State Government under Section 48 of the Act challenging the grant of licenses to the above persons and their inclusion in the voters' list, after hearing the parties, in its order dated 28.4.2006, the State Government as the revisional authority gave the following findings in the penultimate para (as translated) :-

> "On 7.1.2006, the APMC granted licenses to 646 applicants. Thereafter again on 26.1.2006 agenda was issued and meeting was convened on 31.1.2006. Out of seven members of the Committee, four remained present and resolved for issuance of licenses to 818 new applicants. Three members of the Committee who were not present have filed affidavits to show that they were not served with the agenda for the said meeting. Out of 818 new licensees, there were as many as 37 persons who were granted more than one licenses in the same name. As per the agenda, the meeting was scheduled to be held at 3-30 PM but the meeting is shown to have been preponed to 10-00 AM. Seven persons who had allegedly made applications for license have filed affidavits stating that they had not applied for any such licenses. 22 license holders who were granted the licenses at the meeting held on 31.1.2006 and came forward at the hearing are also heard by the State Government."

Even after noting that the Director of Agricultural Marketing and Rural Finance had issued the notification containing the

election program on 30.1.2006 and it was published in the newspapers on 31.1.2006 and that 818 new licenses were issued thereafter, the revisional authority expressed its inability to pass any orders intercepting the election process in view of the judgment of this Court cited before the revisional authority.

2.4 At the first hearing of this petition on 4.5.2006, this Court passed the following ad-interim order which has continued to operate till disposal of the petition on 18.4.2007 :-

> "In view of the findings given by the Revisional Authority in the penultimate para of the order under challenge, without granting any stay against the elections to APMC, Jetpur Pavi, it is directed that the votes, which may be cast by the 818 license holders (the grant of which licenses came to be challenged in revision application No.15 of 2006 before the State Government) shall be kept in separate ballot boxes and the same shall not be mixed with the votes cast by the other voters in the final voters list.
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> Notice returnable on 16.5.2006. Till then the exercise of votes by the said license holders shall be subject to any further orders, which may be passed in this petition and the election results of the traders' constituency shall not be declared till the returnable date."

2.5 Without going into the reasons why the petition was not heard earlier, we may state that on account of the urgency pointed out by the learned counsel for the petitioner on 18.4.2007, when the petition came up for hearing, we took up the matter for final hearing. After hearing the learned counsel for the parties at length, i.e. the learned counsel for the petitioner, learned AGP for

the State and Election Commissioner, learned counsel for the APMC, Jetpur Pavi and the learned counsel for respondent Nos. 4 to 25, who were some of the persons out of the group of 818 persons who were granted licenses pursuant to the resolution dated 31.1.2006 of the APMC, we allowed the petition.

3.0 The submissions made by the learned counsel were as under:-

3.1 Mr DB Rana, learned counsel for the petitioner submitted that before declaration of the date of elections to APMC, Jetpur Pavi, the number of license holders in the constituency of traders holding general licenses was only about 700 and odd. The Director of Agricultural Marketing and Rural Finance issued the notification dated 30.1.2006 for holding the election and scheduling various dates of the election process and the said notification was also published by the District Registrar in the daily newspapers on 31.1.2006. However, the Licensing Sub-Committee of the APMC purported to hold a meeting on 31.1.2006 and passed a resolution for granting 818 trader's licenses. According to the petitioner, the Committee purported to rely on the agenda notice dated 26.1.2006 which was not really issued before the notification of the Director, Agricultural Marketing and Rural Finance. The petitioner's case was that the entire process of the Licensing Sub-Committee passing a resolution on 31.1.2006 issuing licenses to 818 persons in the category of trader's licenses was a fraud on the election process to create artificial majority and to capture votes with the assistance of such artificial majority.

In the meantime, the petitioner had also objected to the provisional voters' list for the traders' constituency in which the petitioner's name was not included and the names of 818 non-genuine traders were included. While the Director of Agricultural Marketing and Rural Finance allowed the petitioner's appeal for

renewal of license on 17.3.2006, in order dated 17.4.2006 in Revision Application No. 15 of 2006 filed by the petitioner challenging the resolution dated 31.1.2006 of the Licensing Sub-Committee, after hearing the APMC and some of the license holders who were granted licenses pursuant to the so-called resolution dated 31.1.2006 of the Licensing Sub-Committee of the APMC, the State Government found several infirmities in the said resolution dated 31.1.2006. In spite of these infirmities, which according to the State Government, were very serious, the State Government decided not to give any directions against the APMC or the Election Officer on the ground that once the election process had commenced, there should not be any interference with the same.

Mr Rana, learned counsel for the petitioner has submitted that in the election petition to be filed after the elections are held and results are declared, the grant of licenses by the APMC or the Licensing Sub-Committee cannot be challenged before the Election Tribunal because the provisions of Section 27 of the APMC Act and Rule 56 of the APMC Rules provide for separate machinery for adjudication of the disputes regarding grant, renewal, refusal, cancellation or suspension of licenses in the traders' category. It is submitted that when the number of license holders in the traders' constituency was only about 700 and odd before the issuance of the election notification by the Director, a mala fide attempt on the part of the outgoing members of the APMC to inflate the number of license holders to 1500 and odd after declaration of the election program was nothing but a fraud on the election process and that, therefore, the judicial intervention was called for, even though the ordinary rule may be that election disputes may not be entertained before the elections are held and results are declared.

3.2. On the other hand, Mr Tushar Mehta, learned counsel for the APMC and Mr VC Vaghela, learned counsel for the 22 license

holders out of those who were granted licenses pursuant to the Licensing Sub-Committee resolution dated 31.1.2006, submitted that a Full Bench of this Court has held in Daheda Group Seva Sahakari Mandali Ltd., 2006 (1) GCD 211, that in writ jurisdiction, this Court should not interfere with the election process even if some illegality or irregularity is alleged against inclusion in or exclusion from the voters' list.

3.3 Ms Trusha Patel, learned AGP for the State and the Election Officer submitted that the petitioner may be relegated to the alternative remedy of filing an election petition before the Election Tribunal under Rule 28 of the APMC Rule, 1965.

4. The rival submissions made by the learned counsel for the different parties in this petition were also urged before us in Special Civil Application Nos. 6482 and 8968 of 2007 which were filed for challenging the grant of trader's licenses to 293 persons after the Director of Agricultural Marketing and Rural Finance had declared elections to APMC, Kalavad, District Jamnagar. In the said matters, the State authorities including the Election Officer were represented by Mr Mihir Joshi, learned Addl. Advocate General. After considering the submissions made at the hearing of those petitions, this Court has held in the judgment dated 11.5.2007 that the Election Officer or the Election Tribunal have no jurisdiction to go behind the trader's licenses issued by the APMC and that Section 27 read with Rule 56 provide for a separate machinery for deciding the disputes relating to grant, renewal, refusal, cancellation and suspension of trader's licenses and that when the licenses are granted after the declaration of the election program for the concerned APMC, any action of the APMC or its Licensing Sub-Committee of issuing a large number of licenses and that too without making requisite and proper scrutiny as required by the provisions of Section 27 and Rule 56 would amount to a

fraud on the election process and where it appears that this has been done to inflate or project artificial majority, such an action has to be struck down as illegal and as a fraud on the election process. All the judgments cited at the Bar by the learned counsel for the parties appearing in this petition have also been considered by this Court in the aforesaid judgment including the aforesaid decision of the Full Bench rendered on 27.4.2005. After considering the said decision of the Full Bench and also the decisions of the Apex Court in Election Commission of India vs. Ashok Kumar, (2000) 8 SCC 216 and in Manda Jaganath vs. KS Rathnam, AIR 2004 SC 3600 as well as the subsequent decision dated 25.8.2005 of the Apex Court in Pundlik vs. State of Maharashtra, 2005 (7) SCC 181, this Court has held that where the power of issuing licenses to a large number, hundreds of persons, was exercised by the Licensing Sub-Committee in an arbitrary and mala fide manner only to give artificial majority to the outgoing office bearers of the Market Committee, this Court will intervene under Article 226 of the Constitution and quash the resolution for grant of such licenses passed after declaration of the date of elections to the APMC. For the reasons elaborately given in the said judgment dated 11.5.2007 and in view of the findings given by the revisional authority in the order dated 28.4.2006 of the State Government in the present matter, which findings are already indicated in paragraph 2.3 hereinabove, we have no hesitation in holding that the resolution dated 31.1.2006 of the Licensing Sub-Committee of the APMC, Jetpur Pavi for grant of license was a fraud on the election process.

These are the reasons for passing the following operative order on 18.4.2007 :-

OPERATIVE ORDER

5. The petition is accordingly disposed of in terms of the following directions :-

It is directed that the Election Officer shall proceed to declare the results of the election to APMC Jetpur Pavi held on 5.5.2006 without taking into account any of the votes cast in the traders' constituency by any of the 818 license holders who were issued licenses on or after 30.1.2006. The results shall be declared within one week from today.

The names of those 818 persons shall be treated as deleted from the final list of voters for the traders' constituency.

6. As regards the challenge to the resolution passed by the license sub-committee on 31.1.2006, in view of the above directions, it is not necessary to express any further opinion on the question of legality or otherwise of the said resolution passed on 31.1.2006. The licenses were granted for the year expiring on 31.3.2006 and even the subsequent marketing year ended on 31.3.2007. If the said 818 persons apply for license for the year 2007-08, the market committee shall consider their applications in accordance with law and if the petitioner is aggrieved by any decision thereon, the petitioner will be at liberty to pursue his remedy against such decision in accordance with law.

7. It is clarified that the only controversy which was the subject matter of the present petition and which we have adjudicated upon was the inclusion in the voters' list of 818 persons who were granted licenses as traders on or after 30.1.2006. After the results of the elections held on 5.5.2006 are declared, any party aggrieved by such results will be at liberty to challenge such results before

appropriate forum in accordance with law, but no election petition or any other proceeding in any other form shall be entertained by any Court, Tribunal or authority in respect of the controversy about deletion of 818 persons who were granted licences on or after 30.1.2006 from the voters' list under this order.

8. As already directed earlier, the results of the election to the APMC Jetpur Pavi held on 5.5.2006 shall be declared after ignoring the votes cast by 818 persons who were granted licenses on or after 30.1.2006. The results shall be declared within one week from today and thereafter the constitution of the APMC shall take place in accordance with the provisions of the APMC Act, 1963.

9. This order is pronounced in presence of the learned advocates for the parties including Mr Trusha Patel, learned AGP who agrees to convey this order to the Election Officer-respondent No.3 herein.

10. Rule is accordingly made absolute in the above terms.

Direct service is permitted.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

zgs/sundar